

1992

Charles W. Webb v. Fred Van Der Veur : Reply Brief

Utah Court of Appeals

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ORIGINAL

In The Utah Court of appeals

Charles W. Webb,
Petitioner/appellant,
v.

Case NO. 920436-CA

Fred Van Der Vuer,
Respondent/appellee,

Reply Brief of appellant

appeal From a Dismissal of a Petition
for writ of Habeas Corpus, In The Sixth
District Court, In and For Sanpete
County, State of Utah, The Honorable
David L. Mower, Presiding.

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On, the Utah Court of Appeals

Charles W. Webb,
Petitioner/Appellant,

v.

Case No. 920436 - CA

Fred Van Der Veer,
Respondent/Appellee,

Reply Brief of appellant

The Statement of the Case and Statement of Facts are as set forth previously in Appellant's Brief. The appellant takes this opportunity to reply to the Respondent's Brief.

Argument

Point I

The Sixth Judicial District Court did not have jurisdiction to determine the merits of appellant's Petition for writ of Habeas Corpus.

appellant was convicted and sentenced

in the Third District Court in and for Salt Lake County, State of Utah.

on December 2nd 1991, Appellant filed his Petition for writ of Habeas Corpus with the Utah Supreme Court on December 10, 1991. The appellant's Petition with the Utah Supreme Court was made returnable to the Sixth District Court for Sanpete County on the grounds that the Supreme Court is an appellate court and does not take evidence. See EXHIBIT Y, in the appellant's Brief on appeal.

The pursuant Case was not a transfer of Venue for appellant's Convenience, but was a transfer on the grounds that the Supreme Court, is an appellate Court and does not take evidence.

The Sixth Judicial District Court did not have Subject Matter jurisdiction to determine the merits of appellant's Petition pursuant to Rule 65.3 (b)(2). The Petition was improperly dismissed.

Point II

Respondent argues that Petitioner's

Claim that the Sixth District Court did not have subject matter jurisdiction over his Petition is untimely and Meritless. is in itself without merit.

The Respondent argues, Ensofar as Petitioner argues that the Sixth District Court should not have been the Court to Consider his petition because it was not "the Court in which the Commitment leading to Confinement was issued," Utah R. Civ. P. 65 B.(b)(2) his objection is untimely and Meritless.

The Respondent, overlooked the July 31 st 1992 order of the Utah Court of Appeals to both parties. That order states.

"It is further order that the parties shall address in their briefs the issue of whether the Sixth Judicial District Court, Sanpete County had subject matter jurisdiction to determine the merits of the petition pursuant to Rule 65 B.(b)(1) and (2) Utah Rules of Civil Procedure.

The appellant was complaining to the order of the Utah Court of Appeals and his claim was not untimely or meritless this Court should address the issues.

Point III

The Habeas Court erroneously dismissed appellant's Petition for writ of Habeas Corpus, without an evidentiary hearing on the merits of the case.

The Respondent argues in its Brief that Petitioner makes no effort to show that the Habeas Court's dismissal of the appellant's Petition was erroneous, is without merit.

The appellant has brought to the attention of the Utah Court of appeals in all proceedings filed with the Utah Court of appeals. The issue of the Habeas Court error in the denial of the appellant's Petition for writ of Habeas Corpus on the grounds that it could and should have been raised on appeal. Codianna v. Morris, 600 P.2d 1101 (Utah 1983).

The Habeas Court erred in dismissing

appellant's Petition when unusual
Circumstances existed. The Utah Supreme
Court has stated.

It is therefore well settled in
this state that allegations of error
that could have been but were
not raised on appeal from a Criminal
Conviction cannot be raised by
habeas Corpus or postconviction
review, except in unusual Circumstances.

The habeas Court overlooked the unusual
Circumstances, and the denial of the
appellant's Sixth, and fourteenth amendments
right to cross-examine his accusers
guaranteed by the United States
Constitution, and Utah Constitution article
1 Section 12, when the trial Court violates
that right by its protective order that
any witness be it defense or prosecution
concerning any alleged other bad acts
by any witness would not be
admissible. This denied the appellant
the right in a jury trial for the
jury to weigh the evidence and to
determine the credibility of the
witnesses. when the credibility of a

given witness may well be determinative of guilt or innocence.

The witness Russell Martindale was given Probation for the theft of Twin Falls lunch store in Twin Falls Idaho for his testimony. Witness Russell Martindale was given Probation for the Burglary of John Nick Jewlers in Medford Oregon for his testimony. Russell Martindale was also given a Nolle Prose for the aggravated Robbery of Eugene Jewlers in Pittsburgh PA for his testimony it was prejudicial to withhold this evidence from the jury and from the Utah Court of Appeals on appellant's direct appeal.

Appellant was denied due process when the Deputy County attorney James Cope violated the Honorable Judge Grant's order to file charges on the witness Russell Martindale if he had any indication in this crime what so ever. The Prosecutor in closing argument used Russell Martindale as a co-defendant and the Protective order of the trial Court denied the appellant the right

To Cross-examine the witness
Russell Martindale on his Prior
inconsistent statements under Utah
Rules of Evidence Rule 613(b).

On the Case before the Court justice
demands unusual circumstances in
this Case.

Appellant was denied a fair trial
as well as a fair direct appeal when
the appellant had to go to the State of
Idaho to have a true and accurate
Copy of the Preliminary Hearing Tapes
87-2413 and 14 transmitted into a Certified
transcript to bring to this Courts
attention that the Conflict of interest
was brought to the Courts attention
before Trial by the Honorable Judge
Grant.

On this Case before the Court, it
was the opinion of the Utah Court
of appeals in State v. John E. Humphrey,
Case No. 89033-CA Citing State v. Webb, 790
P.2d 65 (Utah App. 1990), page 5, and 6, of
the Utah Court of appeals in State
v. Humphrey, quotes...

"In Webb, we determined that

When Codependants are separately represented by two public defenders from the same office, and the potential conflict is brought to the attention of the trial court by counsel before or during the early stages of trial, the trial court must take adequate steps to resolve the issue. If a trial court fails to investigate such a potential conflict of interest, we presume prejudice and reverse. Id. at 44 (Citing Holloway, 435 U.S. at 183-87). A defendant who fails to bring a potential conflict to the attention of the trial court must show on appeal that an actual conflict of interest existed which adversely affected his or her lawyer's performance. Id. (Citing Quyer v. Sullivan, 343, 349-50 (1980))

It was the opinion of the Utah Court of appeals in State v. Webb, 700 P.2d 65 (Utah app. 1990) of a conflict had been raised, and the trial

Court took no adequate steps to remedy the problem the Utah Court of Appeals would have reversed.

It was truly Prejudicial for the appellant's Court Appointed attorney to withhold from the Trial Court, and from the Utah Court of Appeals a true and accurate transcript of the November 24, 1987 Preliminary Hearing when Russell Martindale took the stand. It was a mockery of justice, and rendered the appellant's direct appeal a sham.

This Court must grant full review on this case when a violation of the State, and United States Constitution is an issue. See: State v. Mitchell, 779 P. 2d 1116, 1118 (Utah 1989) State v. Arroyo, 770 P. 2d 153, 154-55 (Utah Ct. app. 1989) Nephi City v. Hansen, 779 P. 2d 673, 674 (Utah 1989) Branam v. Provo School Dist 780 P. 2d 810, 811 (Utah 1989) also see: Townsend v. Sain, 372 U.S. 293 (1963).

In Townsend, the Supreme Court stated a hearing is required for inadequately developed evidence this right is limited to cases in which

the lack of evidence was not
caused by petitioners "inexcusable
neglect." Howland, 372 U.S. at 313, 317.
"Inexcusable neglect" is in turn
defined as petitioners' "knowing and
intelligent waiver" of the right to
present the evidence. Id. 317.

Conclusion

On light of the foregoing and the
issues raised in appellant's Brief, and
appellant's Supplemental Brief in Support
of Motion for Summary Disposition, the
Court should find that unusual
circumstances exist and reverse
the denial of the Sixth Judicial
District Court, and remand this case
to the Trial Court for new trial
free from any violation of the
Constitution of the United States or
the Utah Constitution.

Respectfully Submitted this 29 day of
November, 1992.

Charles W. Webb

CHARLES W. Webb
ATTORNEY PRO SE

Certificate of Mailing

I hereby Certify that a true and accurate copy of the Reply Brief of applicant was mailed postage prepaid this 29 day of November 2002 to the following person listed below:

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